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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2011-0036]

Golden Nematode; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the golden nematode regulations by removing the townships of Elba and Byron in Genesee County, NY, from the list of generally infested areas. Surveys have shown that the fields in these two townships are free of golden nematode, and we determined that regulation of these areas was no longer necessary. As a result of that action, all the areas in Genesee County, NY, that were listed as generally infested were removed from the list of areas regulated for golden nematode.

DATES: Effective on [insert date of publication in the Federal Register], we are adopting as a final rule the interim rule published at 76 FR 60357-60358 on September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Program Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851-2128.

## SUPPLEMENTARY INFORMATION:

### Background

In an interim rule<sup>1</sup> effective and published in the Federal Register on September 29, 2011 (76 FR 60357-60358, Docket No. APHIS-2011-0036), we amended the golden nematode regulations in 7 CFR part 301 by removing the townships of Elba and Byron in Genesee County, NY, from the list of generally infested areas.

Comments on the interim rule were required to be received on or before November 28, 2011. We received one comment from a State agriculture department opposing the removal of the townships of Byron and Elba in Genesee County from the list of areas generally infested with golden nematode. The commenter stated that APHIS did not provide sufficient biological information to support the action.

As discussed in the September 2011 interim rule, the townships of Elba and Byron were regulated for nematode on the basis of their proximity to and association with three fields in Orleans County, NY, in which golden nematode was detected. Golden nematode had not been detected in these townships prior to them being regulated. Surveys conducted in the townships of Elba and Byron from 1977 to 2010 had negative laboratory results for the detection of golden nematode. Because golden nematode was not detected in these townships during the 33 years surveys were conducted and had not been detected prior to the surveys, we have concluded that this pest was not and is not present in these areas.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

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<sup>1</sup> To view the interim rule and the comment we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0036>.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301--DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 301 and that was published at 76 FR 60357 on September 29, 2011.

Done in Washington, DC, this 9<sup>th</sup> day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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